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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Connecticut Department of Public)
Utility Control Petition for) RM No. 9258
Rulemaking)

COMMENTS OF PAGING NETWORK, INC.

PAGING NETWORK, INC.

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May 7, 1998

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To: The Commission

COMMENTS OF PAGING NETWORK, INC.

Paging Network, Inc. ("PageNet"), on behalf of its operating subsidiaries, hereby files these comments¹ opposing the initiation of a rulemaking proceeding to consider technology-specific overlays as the Connecticut Department of Public Utility Control ("CTDPUC") requests in its Petition for Rulemaking ("CTDPUC Petition").²

Introduction and Summary

As PageNet's Comments make clear, the action requested by the CTDPUC would impermissibly discriminate against wireless customers. Rather than grant the CTDPUC Petition, the Commission should explore appropriate number conservation standards that can be administered on a technology-neutral, pro-competitive basis. To this end, the Common Carrier Bureau has requested a report on number availability and conservation from the North American Numbering Council ("NANC") no later than September 23, 1998. After NANC releases its report, the Commission should consider initiating a rulemaking proceeding to develop number conservation standards and review the scope of State authority over numbering issues.

¹ PageNet files these comments pursuant to Public Notice DA 98-743, dated April 17, 1998.

² See Petition Of The Connecticut Department Of Public Utility Control For Amendment To Rulemaking, filed March 30, 1998.

In the interim, the Commission should make clear that the States have the authority, and the responsibility, to implement area code relief in a timely manner to prevent number exhaust. In addition, the States should be encouraged to explore ways to reduce the number of rate centers to the extent feasible, which would materially reduce the demand for NXX codes. Although Connecticut, for example, has already consolidated rate centers from 115 to 86, PageNet respectfully submits that further consolidation would dramatically increase the amount of available NXX codes.

Statement of Interest

PageNet is among the largest providers of wireless telecommunications and information delivery services in the world, serving over 10 million wireless devices in this nation alone. In the United States, it serves the populated portions of every state, and has assigned telephone numbers from most area codes in existence to its subscribers. PageNet fully supports non-discriminatory number conservation and the efficient use of numbers. As such, PageNet has participated in scores of numbering proceedings at both the state and federal level, and was the initial proponent of the Commission's prohibition on mandatory technology-specific overlays announced in the *Ameritech Order*.³ If a mandatory wireless overlay were permitted in any state, PageNet and its subscribers would be adversely affected and, as such, it is vitally interested in the outcome of this proceeding.

Background

Much has happened since the summer of 1995 when the FCC first prohibited technology-specific overlays in the *Ameritech Order*. The Telecommunications Act of 1996 (the "1996 Act") and a number of state commissions committed to local competition have facilitated

³ See *Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech – Illinois*, Declaratory Ruling and Order, 10 FCC Rcd 4596 (1995) ("*Ameritech Order*").

the entry of competitive local exchange carriers (“CLECs”) into some local markets.

For competitive reasons, the CLECs must have at least one full NXX code – 10,000 numbers -- in each of the ILEC rate centers in which they intend to provide local exchange service, regardless of how many subscribers they expect to have within the rate center. Without a full NXX code in a rate center, the CLECs would not be able to offer local rates for calls from ILEC customers to CLEC customers within that rate center, as the ILECs can offer their customers. Moreover, without the NXX codes in each rate center, CLECs would not be able to provide “local” numbers to their new customers. Consequently, the CLECs ostensibly would have great difficulties attracting ILEC customers without full NXX codes in each rate center they serve.

This competitive necessity, however, results in a grossly inefficient use of numbers because the CLECs may not – and probably will not – assign the bulk of these numbers to customers in the foreseeable future. It is easy to see how these practices result in extremely low number utilization rates simply by multiplying the total number of rate centers by 10,000 numbers per NXX code, and multiplying that product by however many CLECs choose to enter the market. In Connecticut alone there are 86 rate centers, which means that each CLEC needs at least 860,000 numbers no matter how few customers it might serve.

Broadband PCS carriers have also had to obtain telephone numbers in the markets in which they have been licensed. Although PCS carriers, like CLECs, also apply for full NXX codes, their customers do not face the same geographic limitations faced by CLECs and thus do not need to request a full NXX code in every rate center. Concomitantly, PCS carriers’ utilization of the codes they receive is substantially higher than CLEC usage. Cellular and

paging carriers, which have continued to obtain numbers in both full and partial NXX codes,⁴ are also markedly more efficient users of codes than CLECs. For example, in metropolitan markets with numerous rate centers, one CLEC could use more NXX codes than the entire wireless industry within the same market. For this reason, PageNet respectfully suggests that technology- or service-specific overlays would have little effect on number exhaust.

In the *Ameritech Order*, the Commission found that technology- and service-specific overlays impermissibly discriminate between classes of carriers by “confer[ing] significant competitive advantages on the wireline companies in competition with paging and cellular companies”⁵ The Commission explained that:

a successful administration of the NANP should seek to accommodate new telecommunications services and providers by making numbering resources available in a way that does not unduly favor one industry segment or technology and by making numbering resources available in an efficient, timely basis. We believe that the assignment of numbers based on whether the carrier provides wireless service is not consistent with these objectives and could hinder the growth and provision of new beneficial services to consumers.⁶

The Commission reaffirmed this finding in its *Second Report and Order*, which specifically prohibits technology- and service-specific overlays.⁷ The Commission again explained that technology- and service-specific overlays “do not further the federal policy objectives of the NANP.”⁸

The Commission also set forth the limits of State authority over numbering in the *Second Report and Order*, which implements Section 251(e) of the Telecommunications Act of

⁴ Partial codes are assigned by the holders of the full NXX codes, typically the ILECs.

⁵ *Ameritech Order*, ¶¶ 25-29.

⁶ *Id.*, ¶ 29.

⁷ Implementation of the Local Competition Provisions of the 1996 Telecommunications Act, Second Report and Order, 11 FCC Rcd 19392 (1996) (“*Second Report and Order*”).

⁸ *Id.*, ¶305.

1996 (the “1996 Act”). In Section 251(e), Congress granted the FCC “exclusive jurisdiction” over numbering.⁹ Congress also instructed the FCC to “create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis.”¹⁰ In implementing Section 251(e), the FCC delegated to the states the limited authority to “resolve matters involving the introduction of new area codes within their states.”¹¹

The FCC expressly “decline[d] to authorize states to handle CO code assignment functions.”¹² In so doing, it explained that:

[w]hile we authorize states to resolve specific matters related to initiation and development of area code relief plans, *we do not delegate the task of overall number allocation, whether for NPA codes or CO codes.* To do so would vest in fifty-one separate commissions oversight of functions that we have already decided to centralize in the new NANPA. *A nationwide uniform system of numbering, necessarily including allocation of NPA and CO code resources, is essential to efficient delivery of telecommunications services in the United States.*¹³

Although the states were given the general authority to “address matters related to the implementation of new area codes” subject to the FCC’s numbering administration guidelines,¹⁴ the FCC does not permit states to control CO (*i.e.*, NXX) code allocation since doing so could “lead to inconsistent application of CO code assignment guidelines.”¹⁵

Indeed, the FCC has narrowly defined the authority the states have to implement even new area codes. Under Section 52.19 of the FCC’s rules, a state may implement any one of three specific procedures: (1) a geographic split; (2) an overlay area code; or (3) an area code boundary realignment. Under no circumstances, however, do the states have the authority to

⁹ 47 U.S.C. § 251(e)(1).

¹⁰ *Id.*

¹¹ 47 C.F.R. § 52.19(a).

¹² *Id.*, ¶ 315.

¹³ *Id.*, ¶ 317 (emphases added).

¹⁴ *See* 47 C.F.R. § 52.19(a).

implement number conservation measures that amount to NXX code administration, such as number pooling or number take-backs in preparation for number pooling, absent specific FCC delegation, which has, to date, not occurred.

In the past year, several states have initiated proceedings to address number exhaust within their respective jurisdictions. Rather than simply implementing area code relief as authorized, many of these states – including, for example, Connecticut, New Jersey, Pennsylvania, Texas and Colorado – have instead explored various number conservation methods like pooling, take-backs or service-specific overlays. Many of the proposed conservation measures threaten to discriminate against wireless carriers, which harms consumers and is not in the public interest.

Prompted by various state numbering proceedings, the Commission has recently requested that the NANC report to it on national number pooling standards no later than September 23, 1998. The Commission has asked that the report be sufficiently detailed to support, both technically and operationally, a uniform, nationwide system for pooling by December 1999.¹⁵ The Commission has also urged the NANC to work cooperatively with state commissions on these issues and to give number conservation solutions, in addition to pooling, a high priority. In response to the Commission's request, the NANC created the Numbering Resource Optimization Working Group ("NRO-WG") to address issues of number availability and conservation, including the availability and optimization of number resources.

¹⁵ *Second Report and Order*, ¶¶ 310, 321.

¹⁶ Public Notice, DA 98-597, CC Docket No. 92-237 (March 27, 1998).

Argument

I. NOTHING HAS CHANGED TO WARRANT GRANT OF THE CTDPUK PETITION AT THIS TIME

The CTDPUK asks the Commission to initiate a rulemaking proceeding to reconsider its prohibition on technology- or service-specific overlays, and concomitantly to expand State authority over numbering. The CTDPUK bases the request solely on its bald assertion that no competition exists between wireline and wireless services, claiming that technology- or service-specific overlays expand the number of codes available without harmful consequence.

Although much has changed in the telecommunications marketplace since the Commission issued the *Ameritech Order* and the *Second Report and Order*, PageNet respectfully submits that none of these changes justify reversal of the Commission's prohibition of technology- and service-specific overlays. The FCC prohibited technology- and service-specific overlays in the *Ameritech Order* and the *Second Report and Order* because such measures discriminate against wireless carriers and harm consumers by having a negative impact on competition. Consistent with these decisions, the Commission's actions since that time have been guided by the overarching goal of fostering competition between service providers, services and technologies, as envisioned by the 1996 Act.

The *Ameritech Order* and the *Second Report and Order* are just two examples of the several ways in which the FCC has consistently promoted competition between wireless and wireline services in the past three years. For example, the Commission has allowed CMRS providers to make fixed use of mobile spectrum,¹⁷ including the introduction of wireless local

¹⁷ Flexible Service Offerings in the Commercial Mobile Radio Services, 11 FCC Rcd 8965 (1996).

loop applications. Indeed, many manufacturers have stepped in to develop equipment that allows cellular and PCS frequencies to be used for this purpose. Perhaps more importantly, the Commission has recognized in the *Local Competition Order* the right of wireless service providers under the 1996 Act to interconnect with LECs and receive reciprocal compensation.¹⁸ These decisions were based, in part, on the desire to protect current, and promote future, competition between wireless and wireline services.

The relief that CTDPUK seeks would undermine the prospects for competition between wireless and wireline services by rendering wireless carriers second-class citizens. New customers of wireline services would receive numbers traditionally associated with that geographic area while new customers of wireless services would receive unfamiliar numbers. Whether competition between wireless and wireline services has fully bloomed in Connecticut is irrelevant to the issue of whether such competition should be encouraged as a federal objective. The 1996 Act and numerous Commission decisions recognize the benefits that competition – including specifically competition between wireless and wireline services – will bring to consumers and thus seek to create a neutral regulatory environment where competition can flourish. For the same reasons the Commission has consistently rejected technology- and service-specific overlays in the past, it should deny the CTDPUK Petition now.

II. THE FCC SHOULD CONTINUE TO FOCUS ON DEVELOPING NATIONAL NUMBER CONSERVATION STANDARDS THROUGH NANC, AND DIRECT THE STATES TO GRANT TIMELY AREA CODE RELIEF IN THE INTERIM

PageNet strongly supports the efficient use of numbers and the development of non-discriminatory national standards for number conservation. The Commission's request that

¹⁸ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499 (1996).

the NANC study number pooling and other means of number conservation and issue a report before September 23, 1998, is a strong step in the right direction. PageNet has urged various States, including Connecticut, to participate actively in efforts to develop national standards for pooling and other conservation methods. The NANC's report should help the Commission identify number conservation methods that are competitively neutral, and define under what circumstance, and in what ways, such conservation methods could be implemented. PageNet anticipates that the NANC report will support the conclusion that technology- and service-specific overlays should not be used, particularly when other conservation methods, like rate center consolidation achieve the same results in a non-discriminatory way.

Until NANC completes its work and issues its report, PageNet respectfully submits that the Commission should not initiate a parallel rulemaking proceeding to reexamine the issue of technology- and service-specific overlays, which might undermine NANC's efforts. Instead, the Commission should continue the course it has initiated: to develop national conservation methods by supporting NANC and encouraging the states, members of the industry and consumers to work together on these issues under the auspices of NANC and the NRO-WG.

Certainly, the CTDPU and other state commissions should be commended for seriously considering a number of number conservation methods. With appropriate standards, conservation methods like number pooling, take-backs, partial NXX code assignments and rate center consolidation can do much to extend an area code's life and decrease the need for successive area code relief plans. On the other hand, it makes little sense to adopt number conservation methods that unnecessarily inhibit competition. This is particularly true when competitively-neutral conservation methods are available. In any event, the FCC has sole jurisdiction over numbering, as explained above, and has narrowly defined the authority the

states have to implement new area codes. Under the Commission's rules, a state may implement any one of three specific procedures: a geographic split; an overlay area code; or an area code boundary realignment.¹⁹ Under no circumstances, however, may a state implement a technology- or service-specific overlay.

Until the Commission has fully considered the NANC report and charted a specific course for various number conservation methods, the states should continue to fulfill their obligation to grant timely area code relief consistent with their current, delegated authority. Once the code administrator has declared a particular NPA to be in jeopardy, the State commission should move expeditiously to implement a relief plan.

State commissions should also be encouraged to develop those number conservation plans consistent with their jurisdiction. Number pooling, take-backs, and code assignment variations are *not* within the scope of State authority. Rate center consolidation, however, is clearly within a State's power to adopt, is a sure and nondiscriminatory means of reducing demand for numbers. As explained above, competitive necessity typically requires CLECs to seek at least one full NXX code in each of the ILEC rate centers in which they intend to provide local exchange service, regardless of how many subscribers they expect to have within the rate center. For each rate center that is consolidated, a State gains at least one NXX code (10,000 numbers) from each CLEC providing service in that market.

Although the CTDPUC has already reduced the number of rate centers in Connecticut from 115 to 86, PageNet respectfully submits that further reductions could be made. Because costs and pricing are no longer distance sensitive, Connecticut might be able to use a single rate center for the entire state, as is being discussed in an ongoing Colorado proceeding.

¹⁹ 49 C.F.R. § 52.19.

PageNet respectfully suggests that there would be no need for a technology- or service-specific overlay if Connecticut were to order further rate center reductions.

Consideration of number conservation methods such as rate center consolidation, however, should *never* delay the timely grant of area code relief once jeopardy has been declared, because such delays stymie the needs of consumers who wish to subscribe to telecommunications services, whether for business or personal needs. Moreover, number exhaust causes a ripple effect throughout our economy: When fewer services are available, efficiency decreases, revenues decline, and less taxes are paid. Certainly, numbering policies should never put our communities at risk in this manner.

Conclusion

For the foregoing reasons, PageNet respectfully requests that the Commission deny the CTDPUK Petition. The Commission should also take the opportunity to reiterate that the states have the authority to implement area code relief and the responsibility to do so in a timely manner.

Respectfully submitted,

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May 7, 1998

CERTIFICATE OF SERVICE

I, Todd D. Daubert, hereby certify that, on this 7th day of May, 1998, a copy of the foregoing Comments of Paging Network, Inc. was sent via first-class mail, postage prepaid, to the following:

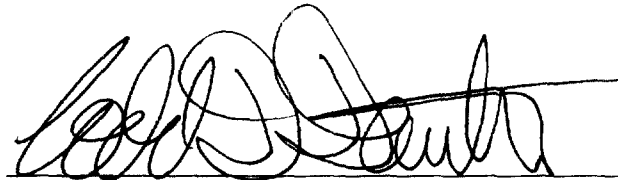
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A handwritten signature in black ink, appearing to read 'Todd D. Daubert', is written over a horizontal line.

Todd D. Daubert